

# **EXHIBIT 2**

1 UNITED STATES DISTRICT COURT  
2 CENTRAL DISTRICT OF CALIFORNIA  
3 WESTERN DIVISION - LOS ANGELES

4 ROBERT HUNTER BIDEN, ) Case No. CV 23-9430-SVW (PDx)  
5 Plaintiff, )  
6 v. ) Los Angeles, California  
7 PATRICK M. BYRNE, ) Wednesday, September 18, 2024  
8 Defendant. ) 3:33 P.M. to 4:45 P.M.  
9 ) VIDEOCONFERENCE  
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13 TRANSCRIPT OF PROCEEDINGS  
14 BEFORE THE HONORABLE PATRICIA DONAHUE  
15 UNITED STATES MAGISTRATE JUDGE

16 Appearances: See Page 2  
17 Deputy Clerk: Isabel Verduzco  
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1 LOS ANGELES, CALIFORNIA, WEDNESDAY, SEPTEMBER 18, 2024, 3:33 P.M.

2 (Call to Order of the Court.)

3 THE CLERK: Calling Case No. CV 23-9430-SVW (PDx),  
4 *Robert Hunter Biden v. Patrick M. Byrne.*

5 Counsel, please state your appearances beginning  
6 with plaintiff.

7 ZACHARY HANSEN: Zachary Hansen from Early Sullivan  
8 Wright Gizer and McRae on behalf of the plaintiff, along with  
9 my co-counsel Mr. Lowell from Winston and Strawn.

10 And, Your Honor, Mr. Lowell is appearing -- he will  
11 be the one taking the deposition of Mr. Byrne, and so he may  
12 jump in at points on the depo issue, just to inform the  
13 Court.

14 THE COURT: All right. Good afternoon.

15 MICHAEL C. MURPHY: Good afternoon, Your Honor.  
16 Michael Murphy appearing on behalf of Defendant  
17 Patrick Byrne.

18 THE COURT: All right. Good afternoon.

19 We are here for an informal discovery conference  
20 based on the parties' email from September 17, which lists  
21 seven disputes. The first is the scheduling of the  
22 defendant's deposition. When was the deposition notice  
23 served?

24 MR. HANSEN: Your Honor, because the parties had  
25 agreed to meet and confer with respect to scheduling



1 depositions, the parties have been engaged in trying to  
2 negotiate a date and a location of the deposition. So no  
3 notice has been served yet, but I first raised the issue of  
4 defendant's deposition -- the scheduling location -- on  
5 August 20th via email.

6 THE COURT: All right. And on August 20th, when  
7 the plaintiff first raised this issue, where did the  
8 defendant reside?

9 MR. MURPHY: My understanding is, is that the  
10 defendant at that point was staying in Dubai. The activity  
11 --

12 THE COURT: I'm sorry. Let me just -- in --  
13 August 20th he was in Dubai?

14 MR. MURPHY: Yes, Your Honor. That's my  
15 understanding.

16 THE COURT: All right. So the entire time this --  
17 you all have discussed the defendant's deposition, the  
18 defendant has been located in Dubai; is that correct?

19 MR. MURPHY: That is correct, Your Honor.

20 And by the way, the conversation that counsel and I  
21 had on August 20th -- I was on vacation in Lake Tahoe.

22 THE COURT: All right. So then it would appear  
23 that the deposition taking place at the defendant's location  
24 in Dubai is something that's been contemplated from the  
25 beginning?

1 ABBE D. LOWELL: Your Honor, this is Abbe Lowell.

2 I don't have any reason to doubt where he might  
3 have been on the 20th, other than he did participate by video  
4 -- and then by audio -- in Mr. Biden's deposition. I didn't  
5 think he was in Dubai as he was in and out. That would be  
6 curious to me. But from the beginning, the conversation  
7 between us and Mr. Murphy had no reference to Dubai until  
8 much later. Indeed, to begin with we were talking to  
9 Mr. Murphy about two locations. He didn't mention Dubai. We  
10 talked about Los Angeles, where the case is pending, and then  
11 he mentioned Florida, where Mr. Byrne has his residence and  
12 where he has property and where, I believe, he's registered  
13 to vote.

14 And so I don't know that he was in Dubai at any  
15 particular point. I do know that in the conversation that  
16 this would be an in-person deposition, both counsel for us  
17 and counsel for Mr. Byrne talked about two locations,  
18 Los Angeles or Florida. That occurred in the end of August.  
19 It occurred in the back and forth between Mr. Hansen and  
20 Mr. Murphy until Dubai was first raised, I think, for the  
21 first time in the very beginning of -- in September. So I  
22 don't --

23 MR. HANSEN: September 11.

24 THE COURT: All right. And the deposition as of  
25 today still has not been noticed, then; is that correct?

1 MR. LOWELL: That's right. Because of two reasons:  
2 one is that the date that we first proposed, the 24th or  
3 25th, which was what was in the framework of what was  
4 possible, they then said wasn't possible. So then we said  
5 the 30th, and that was the operative date until they threw in  
6 that they wanted it in Dubai, and then as you saw in some of  
7 the back and forth, we have come to this point.

8 Again, I want to point out -- so -- that's so  
9 important to this record anyway -- that until the 11th, which  
10 means for a full two weeks in the back-and-forth that  
11 Mr. Murphy was responding to Mr. Hansen, there was no mention  
12 of anyplace other than in the United States and in a place in  
13 which he's a resident. Now, I know that Mr. Murphy says that  
14 Mr. Byrne was and now is in Dubai, but I don't know that  
15 that's, quote, "his residence" and especially given that, as  
16 I said, he has property -- he said in his pleadings and  
17 confirmed in his pleadings in terms of the Answer to the  
18 Complaint and others when we were listing him as a citizen of  
19 Florida is where he confirmed he was. It's where one of his  
20 deposition discovery answers and responses were certified to  
21 be.

22 And so we said to him once this Dubai thing came  
23 up, "Well, wait. Is he ever going to, between now and the  
24 end of discovery" -- which based on the Court's schedule  
25 would be sometime in November, probably November 10th or so

1 -- "be back in the U.S. for any purpose?" We haven't gotten  
2 an answer to that. We haven't got an answer as to whether or  
3 not he has now changed his residence and no longer resides in  
4 Florida to now live permanently in Dubai or any of those  
5 things that would indicate why we can't do this, even if not  
6 on the 30th, at some other date before November 10th.

7 THE COURT: All right. Mr. Murphy, where does your  
8 client now reside?

9 MR. MURPHY: My current client currently resides in  
10 Dubai, and he does business in Dubai. And the concern that  
11 he has is he got death threats at the end of July because he  
12 had been involved in some covert activities in Venezuela, and  
13 he was informed by the DEA that there is a \$20 million bounty  
14 on his head, and he also had been receiving death threats  
15 because of that activity. When I was notified of that, I  
16 notified counsel.

17 The attorney that I've been dealing with on this  
18 issue is not Mr. Lowell. It's been Mr. Hansen. And first of  
19 all, when the issue of taking the deposition came up, I was  
20 on vacation. I wasn't in any position to deal with it until  
21 I got back, which was about two weeks later. Then there was  
22 a kick-around where there was discussions of well, they  
23 wanted to do an in-person depo, and they wanted to do it in  
24 Florida or have my client come here, and then I had to  
25 communicate with my client and find out what he wanted to do,

1 and it was at that point that I learned from him that he was  
2 in Dubai because of these death threats.

3           So then I notified counsel of his concerns. I said  
4 we would still -- the September 30th date was fine with us --  
5 and we could adjust the date. I didn't play hardball with  
6 the date, but I said that date was good and that my client,  
7 as an accommodation, would pay all of the expenses for  
8 everybody to go to Dubai. That would be one of their  
9 attorneys, the court reporter, the videographer. They would  
10 also pay for some of their attorney time because it would be  
11 longer travel than, let's say, to just go to Florida and I --  
12 it would also include the cost of me, and those costs are  
13 almost \$60,000, which he was prepared to spend, at which  
14 point then they said, no, they wouldn't agree to that.

15           With respect to him coming back, obviously, he'll  
16 be back here for trial, but we can't have any assurances yet  
17 about when he will come back because of these threats, and he  
18 has to deal with him, and he has a legitimate concern about  
19 not being harmed.

20           THE COURT: All right. So your client obviously --

21           MR. MURPHY: And so --

22           THE COURT: No. Let's just cut to the chase.

23 There are a lot of issues here, and I certainly don't have a  
24 tremendous amount of time.

25           So on this issue, the defendant certainly will be

1 back in the United States -- in Los Angeles -- for the trial  
2 in the Central District of California. Does the defendant  
3 have any plans right now at all to be in the United States at  
4 any point between now and the trial in this case?

5 MR. MURPHY: My understanding is -- I'm unable to  
6 get a commitment like that. No.

7 THE COURT: Your client is located in Dubai. Your  
8 client is willing to have his deposition taken in this case  
9 in person in Dubai; is that correct?

10 MR. MURPHY: That is correct. And he would pay --

11 THE COURT: Do you know whether there are any  
12 prohibitions, restrictions, or laws at all in Dubai that  
13 govern the taking of a deposition in a case pending in a  
14 foreign country?

15 MR. MURPHY: My understanding is there would be no  
16 prohibitions because of the fact that we would bring the  
17 court reporter there. We would bring the videographer there.  
18 We don't need to go get some kind of a commission from courts  
19 there. They would bring what they need there, and it could  
20 be done in that manner, and he would agree to --

21 THE COURT: All right. So you've researched it,  
22 and there's no prohibition under the law in Dubai that would  
23 prevent a deposition being taken there in connection with a  
24 lawsuit pending in the United States?

25 MR. MURPHY: Yeah. I was unable to find any laws

1 that prohibited it. And --

2 THE COURT: All right.

3 MR. LOWELL: When it's available, I'd like to  
4 respond to that, please.

5 THE COURT: Of course. Of course.

6 All right. And does the defense have any objection  
7 to having a deposition taken -- being deposed via Zoom from  
8 Dubai?

9 MR. MURPHY: No. Not at all. In fact, we have  
10 requested it in our response. We said a good alternative was  
11 to do Zoom. We did the plaintiff's deposition by Zoom so we  
12 could accommodate him.

13 THE COURT: All right. And --

14 MR. MURPHY: So that was the other alternative --

15 THE COURT: No. And then my question is whether  
16 there is any provision in the law in Dubai regarding the  
17 taking of a deposition by Zoom in a case in a foreign  
18 country? Have you looked into that?

19 MR. MURPHY: I've looked, and I haven't been able  
20 to find any law that prohibits a deposition being taken there  
21 of any kind.

22 THE COURT: All right. So now let me ask the  
23 plaintiff. I understand that you want to take the deposition  
24 in person. If you're asking me to order the defendant to  
25 travel from Dubai to the United States for his deposition,

1 you're going to have to cite me some authority --

2 MR. LOWELL: And -- yeah --

3 THE COURT: -- this issue --

4 MR. LOWELL: That was --

5 THE COURT: -- court order --

6 MR. LOWELL: Sorry.

7 THE COURT: -- requiring presence in the  
8 United States, but I'd like to hear the plaintiff's position  
9 regarding the defendant's offer to pay, at least, some of the  
10 costs of the deposition and, secondly, the defendant's offer  
11 to have the deposition conducted via Zoom.

12 MR. LOWELL: Right. Let me start with your more --  
13 I thought the most important question. Actually, the  
14 research we did doesn't make it anywhere near as certain as  
15 Mr. Murphy has just told you, and if that is an issue that we  
16 should get back to you about it in the next day. In fact, we  
17 understand that there are rules, both as to whether you take  
18 your own videographer or your own stenographer, you're still  
19 in the other sovereign, and you're still dealing with  
20 somebody who claims to be a resident there. Second of all,  
21 in terms of, again, various laws of -- that occur in the  
22 Middle East and in Europe about privacy, et cetera, Zoom may  
23 not be the answer, but knowing that that's now been raised,  
24 let us get back to you on that as well. So that's the most  
25 important part of what you said because nobody on this call



1 wants to become close to the line of any violation of what  
2 would be the laws.

3 Now, having said that, there is a change in  
4 Mr. Murphy's positions both from what he just said and what  
5 he said in email. By that I mean, the other day -- day or  
6 two ago -- whatever -- as I read it, he was now saying he  
7 would not do it in person because we didn't immediately  
8 agree. We didn't immediately agree because now I'm hearing  
9 something different. To go and do a one-day, seven-hour --  
10 however -- deposition in Dubai, Your Honor knows that that's  
11 going to be a four-day event in terms of getting there,  
12 coming, being, taking, return --

13 THE COURT: Yeah.

14 MR. LOWELL: -- as opposed to a one-day event if it  
15 was in the United States. His offer to pay the expenses of  
16 one person plus whatever the expenses are was one person, not  
17 two, and of course -- I'm sorry. There's background noise.  
18 Hold on. I'm so sorry.

19 And then of course there's a -- usually you have a  
20 person and more than one person for documents, et cetera, to  
21 facilitate. He did not offer to pay for two people to  
22 travel. And he did not offer to pay the time that would be  
23 added. I don't expect him to pay for the six or seven hours  
24 of the deposition, but if he's going to say this is the way  
25 to do an in-person and insists on it being in Dubai, then it

1 should cover the hours necessary to get there and come back,  
2 which are hours that I would either have to bill the client  
3 for or eat, and that's not something we should do in a normal  
4 case. So there's that issue.

5 As to the Zoom possibility, I guess it is  
6 theoretically possible, but I think we have the natural right  
7 to try to have an in-person. It's more efficient. It works  
8 easier. It's better to be able to do it that way. That  
9 would be the last alternative.

10 And so -- the other point is, and I know Mr. Murphy  
11 has made representations on the record -- or at least now --  
12 I also asked, if this whole thing is happening because  
13 Mr. Byrne claims to have had a call or a communication from  
14 the DEA that says whatever it is that Mr. Murphy said, I  
15 asked for confirmation of that. I asked for a contact at the  
16 DEA. I mean, obviously, this whole case is about Mr. Byrne  
17 saying things that turn out not to be true -- at least that's  
18 our allegations -- and the idea that he's now saying he's,  
19 you know, James Bond and he's being doing overt -- covert  
20 things in Venezuela and has a \$20 million bounty on his head  
21 so he can't come back to a deposition to the place he calls  
22 home in Florida because that's been done, we should not just  
23 accept that. We should find out from the U.S. Government  
24 that that's in fact what they said, and if that's what they  
25 said and that's the reason, then we can go ahead and say,

1 "Okay. Fine. We won't make him come back to the U.S."

2 I am at least skeptical about that, and I'd like  
3 that to be confirmed as well, that, a, he's never coming back  
4 between now and the date of trial. That seems important that  
5 he has to say, and I'd like him to declare that, and then I'd  
6 like him to make sure that, if he does come back, we know  
7 that he's done that. Second, that if this is the reason --  
8 that he says that that's the reason, that it be his  
9 declaration that says so and he gives us a contact person to  
10 confirm that. And then, if those two things happen and the  
11 law is as Mr. Murphy thinks -- and as I think it's not that  
12 simple -- then we should, maybe, revisit this issue by email  
13 or otherwise with the Court.

14 Finally, if all else fails, before we get to a  
15 Zoom, if I understand Mr. Murphy's reciting Mr. Byrne's  
16 concern, another way that we could do in-person if we had to  
17 -- and I'm not offering it yet until I understand what the  
18 record will say about my three questions -- is that my office  
19 does have locations in Paris and in London, which would be  
20 less onerous to get to, quicker, that I could then minimize  
21 the expense of. So, if he can't come back to the U.S., I'm  
22 sure he could get to one of those two locations. And I do  
23 know that in England, for example, we could take this  
24 deposition, and I do know in Paris you could. I don't know  
25 about Dubai. But I'm not there yet, Your Honor, for the

1 reasons I said.

2 THE COURT: All right. Well --

3 MR. MURPHY: Your Honor --

4 THE COURT: Hold on. As both arguments make --  
5 have made clear here, it is vastly more efficient for you all  
6 to work together and come up with what is the least  
7 inconvenient way to do this. It is far less efficient to  
8 litigate this and have me make a decision and order the  
9 logistics of your deposition. I don't like ordering  
10 deposition logistics -- date, time, location. You all are  
11 professionals, and I think you all can sort it out with your  
12 knowledge of the case far more efficiently for you and your  
13 clients than I can. So I don't need to have --

14 MR. LOWELL: I don't disagree with you about that  
15 at all. And --

16 THE COURT: Yeah. So we can have more back-and-  
17 forth here, but, yes, we will go to briefing. I will  
18 definitely seek a declaration from the defendant --  
19 absolutely -- as to where he is currently located, that he  
20 has no plans to return to the United States before the trial,  
21 and declaring the reason why he is in Dubai, and providing a  
22 mechanism by which opposing counsel can verify that  
23 information. That's for starters.

24 I'll also need briefing on the applicable law in  
25 Dubai to assure that this can go forward in Dubai. It is, of

1 course, more convenient to have it in some other -- in a  
2 Western country, like you suggest -- in London or in Paris --  
3 again, something that I think you all could work out much  
4 more easily than I can, but if you want me to rule on this,  
5 then you all can submit the evidence and the applicable law.

6 MR. LOWELL: Can I make a suggestion, Your Honor,  
7 then --

8 THE COURT: Sure.

9 MR. LOWELL: -- and I think what you say is  
10 (inaudible) the way to proceed.

11 If Mr. Murphy will provide us with those things, we  
12 don't have to bother the Court yet. In other words, I do  
13 want a declaration from Mr. Byrne, and I think that might be  
14 in something that we submit to the Court on those three or  
15 four topics.

16 I do want my own research on the issue of the law  
17 that would govern a deposition of a case pending in the  
18 United States in these locations. We will take that on  
19 ourselves. I don't mind discussing that with Mr. Murphy as  
20 long as he commits to doing what Your Honor said. If we need  
21 to then involve the Court by submitting that as part of a  
22 brief, we will. Otherwise, we could also work with him as to  
23 whether or not there is an alternative to what he had  
24 suggested, as well as to the flexibility of time, because I  
25 think in that last exchange he basically said, "Since you

1 didn't agree to Dubai, a, it's got to be Zoom, and; b, it's  
2 got to be on the 30th," neither of which makes sense under  
3 the circumstances since we're willing to be flexible.

4           So, if that makes senses to Your Honor, we'll try  
5 it one more time with counsel but, you know, may be back in a  
6 brief to you pretty soon.

7           MR. MURPHY: Your Honor, may I be heard just on a  
8 couple of things.

9           First of all, I've never made any  
10 misrepresentations about anything. Secondly, I've been fully  
11 cooperative. I've made different offers and different  
12 alternatives on how to handle this, and I got nowhere.  
13 Number three, I haven't been dealing at all with Mr. Lowell  
14 on any of this. I've only been dealing with Mr. Hansen.

15           So -- and Mr. Lowell's offer to go to Paris is a  
16 very good one, and also England is a very good one, and I  
17 think we might be able to do that too. So that's, maybe,  
18 something we also can consider, but they never came forward  
19 with any proposals. It was Florida or we're coming here, and  
20 even when we offered to shell out almost \$60,000 in costs, we  
21 still ran into a wall.

22           But if the Court wants us to supply them with a  
23 declaration, we'll be happy to do that. We'll be happy to  
24 meet and confer with them. I still think, in lieu of the  
25 fact that we've had these disagreements, Zoom is the easiest

1 way to go, and we can certainly check the law in Dubai again  
2 just to make sure there shouldn't be a problem with doing a  
3 Zoom deposition. We did it with the plaintiff. It worked  
4 very well. And I've taken over a thousand depositions using  
5 Zoom. It's very cost effective. It's favored in the case  
6 law that we supplied the Court. There's even a code section  
7 that allows the Court to order it. So I'm saying that's the  
8 other alternative, but we'll do whatever the Court wants.

9 THE COURT: All right. Well, I'm not going to  
10 order a Zoom deposition right now. As I said, my preference  
11 is for you all to work out the logistics. If you don't, I  
12 will absolutely order all of the logistics that you need  
13 because the plaintiff is certainly entitled to take the  
14 defendant's deposition.

15 I do think the defendant needs to submit a  
16 declaration as to where he is currently located, as to  
17 whether he has any plans to be anywhere within the  
18 United States between today and the date that the case sets  
19 for trial and stating the reason why he cannot return to the  
20 United States between now and then and provide the  
21 identifying information and contact information for whoever  
22 it is that has conveyed to him that he should not return to  
23 the United States between now and the trial, and that should  
24 be provided -- let's see. Today is the 18th. That should be  
25 provided by Friday, by the -- September 20th because you have

1 very little time here before trial and a lot to accomplish.

2 All right. That's Dispute 1.

3 MR. LOWELL: Thank you, Judge.

4 Judge, would you allow me to excuse myself? I was  
5 going to address the deposition. Mr. Hansen has the others.  
6 Just because of the time difference and my need to pick up a  
7 kid?

8 THE COURT: Yeah. That's fine.

9 MR. LOWELL: I appreciate it. And I appreciate  
10 your consideration. Thank you.

11 THE COURT: Uh-huh. You're welcome.

12 All right.

13 MR. HANSEN: Thank you, Your Honor.

14 THE COURT: Dispute 2, the defense states that  
15 responding to an interrogatory would require him to violate  
16 code sections pertaining to classified information. Does the  
17 -- my understanding from the email is that the interrogatory  
18 is seeking the identity of two witnesses.

19 Mr. Hansen, is that correct?

20 MR. HANSEN: Correct to a certain extent. There  
21 are a couple -- there are several interrogatories that are at  
22 issue here, Your Honor, and I'll start with the fact that  
23 during counsel and I's meet-and-confer call -- extensive  
24 meet-and-confer call regarding all outstanding issues on  
25 September 2nd, we mutually agreed to amend all discovery



1 responses, and that included defendant's responses to Set One  
2 of interrogatories, which I'll note were first propounded in  
3 March, and we didn't even get responses until July. We've  
4 been going back and forth about amended responses. The  
5 current interrogatories at issue are Nos. 3 through 8, 10 and  
6 11, and 13 through 17, and while --

7 THE COURT: Are those all within Dispute 2?

8 MR. HANSEN: Yes, they are. Because plaintiff's --  
9 or, defendant's responses are currently evasive and not code  
10 compliant. While some do request --

11 THE COURT: Okay. What are the numbers, again?  
12 These -- interrogatories? Tell me again.

13 MR. HANSEN: 3 through 8, 10 through 11, and  
14 13 through 17, Your Honor.

15 THE COURT: All right. And these are plaintiff's  
16 Set One --

17 MR. HANSEN: First set.

18 THE COURT: -- interrogatories. All right. So let  
19 me --

20 MR. HANSEN: Yes, Your Honor.

21 THE COURT: We're not going through all of -- we're  
22 not going to spend hours here.

23 Mr. Murphy, are you intending to provide  
24 supplemental responses to the Interrogatories 3 through 8,  
25 10, 11, and 13 through 17?

1 MR. MURPHY: I've agreed to do all of that except  
2 with respect to the two witnesses. That's the only issue and  
3 how to handle it. I do --

4 THE COURT: Which two interrogatories are the  
5 witnesses responsive to?

6 MR. MURPHY: The witnesses are involved in all of  
7 these. These are the only ones that are at issue. We would  
8 have to disclose them in answering all of these  
9 interrogatories. That's what --

10 THE COURT: Other than identifying those two  
11 witnesses, has the defendant fully responded to these  
12 interrogatories?

13 MR. MURPHY: I did not because of the concern over  
14 the witnesses, but I could respond to them without the  
15 witnesses. It's just I would be giving an incomplete  
16 response, but I could do that. I could provide them with  
17 further responses on 3 through 8, 10 through 11, and  
18 13 through 17 without the witness information. I mean, I  
19 could confirm who those -- you know, that he spoke to those  
20 witnesses. I could call them "Doe 1" and "Doe 2," and I  
21 could indicate where he spoke with him and that kind of thing  
22 -- and how they relate to the case. I could certainly do  
23 that --

24 THE COURT: Okay. And when is the earliest that  
25 you could accomplish that?

1 MR. MURPHY: I could get him the responses, I  
2 believe, by Friday.

3 THE COURT: All right. So that -- then that's the  
4 --

5 MR. HANSEN: Your Honor, if I may?

6 THE COURT: No. Just a minute. We're going to  
7 break this -- so he's going to provide supplemental responses  
8 to Interrogatories 3 through 8, 10, 11, and 13 through 17 by  
9 Friday, September 20th, that -- those responses will not  
10 state the identities of the two individuals.

11 All right. Now, with regard to the identities of  
12 the two witnesses, I do not understand how responding to the  
13 interrogatory would require you to violate these classified-  
14 information sections, but setting that aside, the defense  
15 contends that you need U.S. Government permission to disclose  
16 these witnesses' names in response to these interrogatories;  
17 is that correct?

18 MR. MURPHY: Well, the statutes that we have say  
19 it's a crime to do it, and I have an attorney --

20 THE COURT: A crime to do what? Because the --

21 MR. MURPHY: Disclose the names --

22 THE COURT: -- names are classified?

23 MR. MURPHY: Yes. Covert agents -- if you know who  
24 they are and you disclose the names, it's a violation of the  
25 federal statute, and there's criminal ramifications for that.

1 Now, I wanted to --

2 THE COURT: So these two individuals are covert --  
3 are agents who --

4 MR. MURPHY: International --

5 THE COURT: -- covertly for the U.S. Government?

6 MR. MURPHY: International covert agents that are  
7 working for the U.S. Government.

8 Now, I'm not leaving us out in the cold. I am  
9 working with an attorney that works for the U.S. Government  
10 that is involved with classified information and covert  
11 agents. She does the work here domestically, and she does it  
12 full time, and they prosecute people that violate those laws.  
13 They give clearances -- they handle all of that. And I've  
14 been in communication with her, and she's going to check  
15 through her boss and through officials through the Department  
16 of Justice to find out where we can go to get assurances  
17 that, if we disclose who these people are, my client won't  
18 get criminally prosecuted. And if we can get a letter --  
19 some kind of confirmation to that effect, that takes care of  
20 that, and we're working on that, and we hope to have some  
21 kind of response back from her by next Monday. And then --

22 THE COURT: Why would the disclosure implicate the  
23 classified -- the statutes that pertain to classified  
24 information?

25 MR. MURPHY: Because what you're doing is you're

1 giving the name of somebody, and you're -- they're also  
2 asking not just for the name, their address, their phone  
3 number, and if they're a covert agent, and they're working  
4 for our Government -- working for our Government on our  
5 Government's behalf, they could be treated as a spy in that  
6 country and then --

7 THE COURT: How is the fact that they're working  
8 for the U.S. Government relevant?

9 MR. MURPHY: Because of the fact that's who our  
10 client spoke to, to -- that got -- where -- that's where he  
11 got the information that's on the article that plaintiff is  
12 suing over. He went back there on a government mission, and  
13 while he was there, he was speaking to these people in  
14 connection with that government mission, and they, in turn,  
15 provided him with the information that's in the article.

16 THE COURT: That he then repeated?

17 MR. MURPHY: He repeated what they told him in the  
18 article -- on the Hunter Biden information.

19 MR. HANSEN: Your Honor, if I may respond?

20 MR. MURPHY: And then -- let me -- if I may finish.

21 THE COURT: Yes.

22 MR. MURPHY: And then, also, he told me and we've  
23 produced -- there are three voicemail tapes of somebody who  
24 also -- was a different individual who also was involved in  
25 this.

1           So his concern is being prosecuted, violating those  
2 statutes. All I'm trying to do is confirm he won't get  
3 prosecuted. If he won't get prosecuted, then the only other  
4 concern he has is to make sure that the information of these  
5 witnesses is kept confidential and is not disclosed and  
6 there's no harm brought to them. That's the only other  
7 concern.

8           THE COURT: Who are you speaking with at the  
9 Department of Justice?

10           MR. MURPHY: I haven't yet. I'm speaking with an  
11 attorney who works for a division of the U.S. Government that  
12 deals with classification of information and deals with  
13 covert people that are operating within the United States.

14           THE COURT: Oh, they're not -- oh, so it's not a  
15 DOJ employee? Who -- what -- who --

16           MR. MURPHY: I don't know --

17           THE COURT: -- (inaudible)?

18           MR. MURPHY: I don't know what division she works  
19 for. She was referred to me. I know she's done this work.  
20 I've spoken to her in the past about her work. I'm just not  
21 exactly sure of the name of her department. I know that  
22 that's all she does full time is work on this stuff dealing  
23 with -- you know, if you want to get a -- be able to review  
24 classified information, she has to clear you. If you violate  
25 the law and you release classified information, then they

1 prosecute. She's involved in the prosecution. And she does  
2 work dealing with this stuff on a domestic basis, not an  
3 international basis. So she said that she doesn't do  
4 international work but she could go in and find out who we  
5 need to contact within the Department of Justice -- or  
6 whatever department is there on this -- to get it cleared  
7 that we're going to be okay.

8 MR. HANSEN: Your Honor, can I make a point,  
9 please?

10 THE COURT: Yes.

11 MR. HANSEN: So first of all, there are several  
12 interrogatories that have nothing to do with disclosing  
13 covert information: 13, 14, and 17. 13 asks for defendant  
14 to identify every person that interviewed him for the  
15 publication, to which he responded Michael Flynn and then  
16 later retracted that comment and said Flynn had no knowledge  
17 whatsoever and involvement in drafting the article beyond the  
18 introduction. So I'm only asking for who's involved with  
19 interviewing him for the publication. Presumably, it wasn't  
20 covert agents.

21 THE COURT: That's 13, 14, and 17?

22 MR. HANSEN: That's No. 13. No. 14 asks --

23 THE COURT: Okay. Hold on.

24 Mr. Murphy, so No. 13 doesn't sound like it  
25 requires the names of these covert agents.

1 MR. MURPHY: Well, I've agreed to provide a  
2 response to that. I wasn't --

3 THE COURT: No, no. A full response. I -- my  
4 question --

5 MR. MURPHY: Right.

6 THE COURT: -- to you was -- you have to provide a  
7 full response. The only issue here is whether you have to  
8 identify the -- if answering would require you to identify  
9 the name of a covert agent.

10 MR. MURPHY: I've already agreed to --

11 THE COURT: -- that, full response to 13 by Friday.  
12 All right. What about --

13 MR. MURPHY: I've agreed to provide a full response  
14 to all of the interrogatories -- that's what I said -- except  
15 for the identity of these witnesses to the extent it's being  
16 sought or would have to be disclosed.

17 THE COURT: All right. So, Mr. Hansen, do we have  
18 to go through all of them, then? He's going to give you a  
19 full response by Friday except this issue, and I want to hear  
20 the plaintiff's position on this issue regarding these  
21 individuals whose identities the defendant believes he cannot  
22 disclose.

23 MR. HANSEN: Yes, Your Honor. And I won't go  
24 through all of them. I just want to point out two others  
25 that obviously do not involve covert agents.



1           No. 14 asks whether -- if he contends that the  
2     defamatory statements -- and "defamatory statements" was a  
3     defined term as the statements made by defendant in the  
4     publication that are the subject of this litigation. Instead  
5     of providing a whole response, he just objected to the word  
6     "defamatory statements" and just said, "I didn't make any  
7     defamatory statements. Everything is true." That asks for  
8     him to state all facts supporting that contention that  
9     they're true. He has not provided that.

10           No. 17 asks for him to identify every time the  
11     defamatory statements were published or republished. Again,  
12     I do not believe that that's going to involve the --  
13     identifying any covert agents as he claims.

14           My next point, Your Honor, is that these  
15     interrogatories were propounded in March. We are now in late  
16     September. If these were such legitimate concerns that  
17     counsel had to contact a lawyer that deals with the DOJ and  
18     covert agents and is waiting on getting a response back -- or  
19     whatever he's waiting on -- a letter -- it seems like this  
20     could have been done months ago. Given counsel's and  
21     defendant's repeated and consistent delays in discovery, I  
22     find it hard to believe that this is going to happen in any  
23     timely manner.

24           Number two -- or, number three, the defendant has  
25     produced one declaration that is self-serving from some

1 individual that basically recites all of the same defamatory  
2 statements and three voicemails that are unauthenticated. We  
3 have no idea who's speaking, when they were recorded, what  
4 they're even about because they don't mention my client or  
5 anything related to this case whatsoever, and we don't know  
6 --

7 THE COURT: Well, wait a minute. Are these in  
8 response to the interrogatories?

9 MR. HANSEN: These are in response to requests for  
10 production --

11 THE COURT: Okay.

12 MR. HANSEN: -- but they are referenced in the  
13 interrogatories as --

14 THE COURT: All right.

15 MR. HANSEN: I asked for documents -- identify all  
16 documents that support various claims. Those are some of the  
17 other ones that would potentially, as counsel claims,  
18 identify these covert agents. He specifically identified  
19 these three voicemails. They have no authenticating  
20 information -- identifying information at all. We are asking  
21 for them simply to provide that information so that we can  
22 authenticate them and get more than just a file with somebody  
23 talking on it about whatever they're talking about.

24 THE COURT: All right. And has Mr. Murphy refused  
25 to provide that information?

1 MR. HANSEN: Yes. He has refused --

2 MR. MURPHY: No. I have not. That's not true.

3 MR. HANSEN: -- to provide that information and --

4 THE COURT: All right.

5 MR. MURPHY: That's not true.

6 THE COURT: So let me --

7 MR. HANSEN: Please let me finish speaking,  
8 Counsel.

9 MR. MURPHY: Yeah. I'll let you finish, and then  
10 I'd like to have a lot of time to respond.

11 THE COURT: All right. I don't have a lot of time  
12 and so --

13 MR. MURPHY: There you go.

14 THE COURT: -- if we're going to send these  
15 discovery disputes to briefing if we can't reach a resolution  
16 here.

17 So I understand that you have a history -- that  
18 there's a history to all of these disputes. Now, Mr. Murphy  
19 is going to produce no later than Friday, September 20th,  
20 full and complete responses to Interrogatories 3 through 8,  
21 10, 11, and 13 through 17, with the exception of identifying  
22 the covert agents. To the extent that that is responsive to  
23 the interrogatory, he can refer to them as "Doe 1" and  
24 "Doe 2" -- other than that, full and complete responses. And  
25 as I think I've said before in this case, it's unlikely there

1 will be any extensions, and you can imagine that if discovery  
2 is not timely produced, I can assure you there will be  
3 preclusion orders in this case at trial. So I strongly urge  
4 you both to simply fully and completely respond.

5 All right. So that -- are there any -- is there  
6 anything else in connection with Dispute No. 2?

7 MR. HANSEN: One request, Your Honor. Given the  
8 late stage of this case before trial, would Your Honor be  
9 inclined to propose a date by which counsel can provide this  
10 letter that he speaks of and -- based on his conversations  
11 with this other attorney?

12 I'll also mention we have a protective order in  
13 place that should cover any sort of concerns that counsel has  
14 regarding the disclosure of these identities. I haven't  
15 heard a legitimate --

16 THE COURT: Well, I don't know. What letter are  
17 you referring to?

18 MR. HANSEN: The letter that counsel said that he  
19 is talking with this other attorney and he can get a letter  
20 that basically gives him permission from the U.S. Government  
21 to disclose these identities.

22 THE COURT: All right. I find it extremely  
23 unlikely that by Monday, or anytime soon, if this truly does  
24 pertain to classified information, that there's going to be a  
25 disclosure order. I don't know the particulars.

1 I guess, Mr. Murphy, what is the name of the  
2 attorney with whom you are speaking, and to your knowledge,  
3 where is this person employed?

4 MR. MURPHY: Okay. Let me look up her name. I've  
5 got it right here.

6 MR. HANSEN: Would plaintiff's counsel be permitted  
7 to --

8 MR. MURPHY: Her --

9 MR. HANSEN: -- contact this individual,  
10 Your Honor --

11 THE COURT: Hold on.

12 MR. MURPHY: Her name is --

13 MR. HANSEN: -- (inaudible)?

14 MR. MURPHY: -- Aubre DeAngelis. She works for the  
15 federal Government. She works in an office, but most of the  
16 time she works out of her home. My understanding is most of  
17 the time she's a remote employee, but she does --

18 THE COURT: Okay. Can you spell it? Spell it.

19 MR. MURPHY: Yeah. I'd be happy to. Aubre --  
20 A-u-b-r-e. The second word is capital D-small e -- De -- and  
21 then the last name -- part is Angelis, A-n-g-e-l-i-s.

22 THE COURT: Okay. And what agency does she work  
23 for?

24 MR. MURPHY: My understanding is, is that she is --  
25 she's always kind of kept her job secret. I know she does

1 this stuff. She works for a -- the federal Government, and  
2 she works on cases where people have violated their  
3 classification and disclosed confidential information or  
4 covert agent information illegally, and they prosecute them.  
5 She works on revocation of companies' classification  
6 statuses, if they leak information out of their company in  
7 documents. I know that she does all of this kind of work.  
8 So I reached out to her, and she said that she believes going  
9 through her boss she can probably, because she does that  
10 work, refer me, then, to somebody either within the  
11 Department of Justice or some other intelligence agency where  
12 we can go to them and get clearance on this so we don't have  
13 a problem.

14 THE COURT: It appears she works for the  
15 U.S. Department of Defense.

16 MR. MURPHY: I think it's either U.S. Department of  
17 Defense or she works for the Department of Justice. I'm not  
18 sure which, but it deals with classifications -- issuing  
19 classifications so people can see classified information and  
20 also disclosure -- illegal disclosure of classified  
21 information and covert agents.

22 THE COURT: Is there a way in which you all can  
23 respond to the interrogatories --

24 (Pause.)

25 MR. HANSEN: May I propose --

1 THE COURT: Hold on -- or more broadly address the  
2 issues in this case without disclosing the identities of  
3 these two individuals?

4 MR. MURPHY: Yes. And I'm prepared to do that, and  
5 I said I would with the further responses this Friday.

6 THE COURT: No. That's not my question.

7 MR. MURPHY: Oh, okay.

8 THE COURT: My question is, is it -- and this is  
9 really, I think, more a question for you, Mr. Hansen.

10 Is it possible to -- do you have sufficient  
11 information in discovery if you get all of the information  
12 other than the identities of these two individuals?

13 MR. HANSEN: Well, I would say that I have not  
14 received sufficient information. There's been deficient  
15 responses throughout. But if defendant doesn't have any  
16 further information to provide, then I think a reason why  
17 this -- a way that we could resolve this is defendant just  
18 stipulates to the fact that he will not rely on or mention or  
19 otherwise disclose whatsoever at trial or rely on in his  
20 defense any information that these individuals have. Because  
21 he's hiding behind these grandiose claims of covert ops, and  
22 as my co-counsel said -- Mr. Lowell -- this entire case boils  
23 down to allegations that Mr. Byrne makes untrue statements  
24 publicly.

25 And I'll note the fact that these individuals have

1 covert identities, he's worried about violating the statutes  
2 didn't prevent him from publishing and republishing over and  
3 over and over again the statements in which they -- these --  
4 this information that was told to him. So, if he's going to  
5 show up at trial and all of a sudden have a declaration from  
6 somebody that was never disclosed despite our repeated and  
7 numerous efforts to obtain that information, that's going to  
8 greatly prejudice plaintiff. So if he'll agree to a  
9 stipulation --

10 THE COURT: Oh, yeah. That won't happen. He'll be  
11 precluded from presenting any of that if he doesn't produce  
12 it in discovery. So that --

13 MR. HANSEN: I understand.

14 THE COURT: That's not going to happen.

15 All right. So, Mr. Murphy, you need to  
16 expeditiously determine to what extent it will be possible  
17 for you to disclose the identities of these two individuals  
18 in discovery in this litigation, and you will share with  
19 plaintiff's counsel your contact information, the individuals  
20 you've spoken with on this issue, and what they have advised.

21 MR. MURPHY: I will do that.

22 MR. HANSEN: Your Honor, are you inclined to put a  
23 deadline on that disclosure of when he will provide that  
24 information? Because, as I've said, with respect to  
25 deposition -- defendant's deposition, I followed up almost



1 daily and got hit with no response whatsoever.

2 THE COURT: Well, he --

3 MR. HANSEN: So I'm concerned about further --

4 MR. MURPHY: You know what? This constant --

5 THE COURT: He just --

6 MR. MURPHY: I want to say something.

7 This constant misrepresentations to the Court that  
8 we aren't conducting discovery and we're not giving them  
9 information and we're being evasive and we're liars and we're  
10 misrepresentative people is outrageous. We have done tons of  
11 discovery in this case, and we have provided a lot of  
12 information, and the fact that we have a dispute over, maybe,  
13 5 or 6 interrogatories out of a total of almost 50 that were  
14 sent to us is ridiculous. We've also responded to 58 request  
15 for admissions, and we've also responded to three sets of  
16 special interrogatories and a request to produce.

17 And I'd like the Court to know that counsel  
18 confirmed in writing to me that the responses for some of  
19 this discovery were not due until September 5, and we agreed  
20 to move it to the 21st of September, and then counsel turned  
21 around and said, "No. I don't have that agreement with you,  
22 and you waive all objections and all rights on the request  
23 for admissions." In looking at that, I went back and found  
24 the email, and I had one day to respond and object to all of  
25 this discovery so we wouldn't have any waivers.

1           So counsel's statements, Oh, we're misrepresenting  
2 things and we're dishonest and we're stalling and delaying --  
3 this has been caused by him, by virtue of the fact that he  
4 had agreed we would have until the 5th of September. And  
5 this was agreed to prior to me going on vacation and then to  
6 come back and find out we really don't have a deal. And if  
7 the Court would like to see the emails that I exchanged with  
8 counsel, I'll be happy to share them.

9           THE COURT: All right. I'm very busy, I have a lot  
10 of other matters, and so I don't need to hear accusations  
11 flung from either of you. Let's either through and resolve  
12 the disputes that are in the email. It's a waste of your  
13 time and mine to fling accusations.

14           Now, with regard to Dispute No. 2 --

15           MR. MURPHY: Well, I've agreed on --

16           THE COURT: -- Mr. Murphy has --

17           MR. MURPHY: Yeah.

18           THE COURT: Mr. Murphy has already provided the  
19 name of the individual that he is speaking with to try and  
20 determine the extent to which his client will be able to  
21 disclose the identity of these covert agents. He's provided  
22 that.

23           The order is on an ongoing basis. As the  
24 communications occur and as you obtain information about this  
25 process, Mr. Murphy, please share it with Mr. Hansen so that

1 you all can determine the extent to which, if at all, these  
2 identities can be disclosed in connection with this  
3 litigation.

4 Other than that, I think we've addressed  
5 Dispute No. 2.

6 Dispute No. 3 pertain [sic] to the requests for  
7 admission. Defendant's RFAs ask plaintiff to admit, one,  
8 that he is a public figure and; two, that the alleged  
9 defamatory statements are a matter of public concern, to  
10 which plaintiff objected on the basis that they improperly  
11 seek a legal conclusion.

12 All right. They obviously do seek a legal  
13 conclusion, but in any event, the defense then states that  
14 they're not seeking a further response to the request for  
15 admission. So there's nothing to rule on. So this dispute  
16 is entirely resolved and didn't need to be in the email;  
17 correct?

18 MR. MURPHY: Agreed.

19 MR. HANSEN: No, Your Honor. I would --

20 THE COURT: All right. What's not resolved?

21 MR. HANSEN: Under Federal Rule of Civil Procedure  
22 37, if a -- an RFA is properly objectionable, no sanctions  
23 award will be issued.

24 THE COURT: Right.

25 MR. HANSEN: Counsel is threatening a sanctions

1 award for us -- our refusal to answer these questions. So I  
2 would like to resolve this issue right here and now that  
3 these objections are proper and that no sanction award will  
4 be issued on that basis. Because I want to avoid this issue  
5 down the road is essentially my contention, and so I stand on  
6 these objections. And I'll also note that opposing counsel  
7 did demand, initially, further responses. When I said I was  
8 going to stand on these objections, several different times,  
9 he has now pitted to "We're going to file a sanctions  
10 motion," forcing us to prove up these matters. So I would  
11 just like to nip this issue in the bud right now.

12 MR. MURPHY: Your Honor, the case law is clear --  
13 and also the code that we cite in our responses -- is an  
14 issue for the trial judge. These issues do not come up and  
15 they're not ruled on until the end of trial. It's not a  
16 discovery issue --

17 THE COURT: That's not necessarily the case, but if  
18 you -- I'm certainly not going to entertain any request for  
19 sanctions. If the defense wants to file a motion, they can  
20 follow Local Rule 37.

21 MR. MURPHY: Good. Thank you, Your Honor.

22 THE COURT: All right. Dispute No. 4: Defendant's  
23 Interrogatory 9 asks for plaintiff to identify certain  
24 witnesses with relevant information regarding defendant's  
25 alleged defamatory statements. The -- well, first of all,

1 let me make sure. This is still -- this dispute is still  
2 live; is that correct?

3 MR. MURPHY: Yes.

4 THE COURT: All right. And the defense contends  
5 that the plaintiff has failed and refused to fully respond  
6 specifically to Special Interrogatory No. 9.

7 All right. Has the plaintiff -- does the plaintiff  
8 intend to supplement the response to Interrogatory No. 9 or  
9 no?

10 MR. HANSEN: Your Honor, plaintiff has supplemented  
11 this response already and has provided a code-compliant  
12 response that says, despite a reasonable and good faith  
13 effort, he is not aware of the contact information for the  
14 four individuals at issue. These four individuals --

15 THE COURT: Okay.

16 MR. HANSEN: -- are listed as contributors to the  
17 article in which defendant's statements were published. We  
18 have been unable to identify any contact information. We  
19 have had a P.I. looking for this information. We are of the  
20 belief that these names may even be pseudonyms. We're not  
21 sure, but we have been unable to identify any of these  
22 people.

23 I will note one of these people who is listed as  
24 the CEO and editor in chief of the publication at issue,  
25 based on social media, has commented on and interacted with

1 defendant on social media on numerous occasions, including in  
2 one of our documents that we produced in discovery. And  
3 presumably this would be information that defendant would  
4 know. This relates back to the issue regarding defendant's  
5 deficient responses to plaintiff's interrogatories in which  
6 we asked for the identities of every individual who  
7 interviewed him and contributed to the article.

8 On the front page of this article, it lists these  
9 four individuals as, quote-unquote, "contributors." There's  
10 nothing more for plaintiff to do in this regard. We have  
11 satisfied our discovery obligations. If and when we become  
12 aware of their contact information, we will provide it as  
13 required under the discovery code.

14 THE COURT: All right. So, Mr. Murphy, I can't  
15 order them to provide what they don't have.

16 MR. MURPHY: Okay. Then they also have this on  
17 their Rule 24 -- Rule 26 disclosure, where they're listing it  
18 as potential witnesses they're calling at trial. So I --

19 THE COURT: Well, of course they do. But that  
20 doesn't --

21 MR. MURPHY: Well, then --

22 THE COURT: -- they have the contact information.

23 MR. MURPHY: -- they should be able to provide the  
24 contact information. We answered --

25 THE COURT: You just heard that they don't have it.

1 MR. MURPHY: Your Honor, they have a duty to go get  
2 it if they're going to list it as a potential witness for  
3 trial. They're going to list a trial witness and not tell us  
4 their address and phone number?

5 THE COURT: Do you have it? Does your client know  
6 this information?

7 MR. MURPHY: No. Because they were not  
8 contributing editors to what we wrote.

9 And in answers to their interrogatories -- what  
10 they don't tell you is that we said nobody was involved in  
11 drafting the particular article which is involved in this  
12 case other than my client and providing --

13 MR. HANSEN: That's not stated anywhere in  
14 discovery.

15 MR. MURPHY: If I may --

16 THE COURT: All right.

17 MR. MURPHY: If I may not be interrupted.

18 We answered in one of their special interrogatories  
19 that my client drafted a composite of the article and  
20 supplied it to the publication to publish that particular  
21 article. The article that we're talking about is the one  
22 where the plaintiff claims he was defamed. This magazine has  
23 a whole slew of other articles in it about my client and his  
24 history and other things that have nothing to do with the,  
25 quote-unquote, "defamatory article" --

1 THE COURT: My question simply was whether your  
2 client had the contact information.

3 MR. MURPHY: We don't even know who these people  
4 are, and yet they're listing them as potentially calling as  
5 witnesses at trial.

6 THE COURT: Yes. You heard that they don't have  
7 the contact information. So I can't order them to produce  
8 what they don't have. If you -- they have an obligation --  
9 an obligation to supplement discovery responses. The duty to  
10 respond to discovery is ongoing. Obviously, if the plaintiff  
11 acquires that information, they're required to produce it to  
12 the defense. All right.

13 MR. HANSEN: Your Honor, as an example of the  
14 defendant's hiding the ball on discovery, this is the first  
15 time I've heard that defendant himself drafted the article  
16 and sent it in. That is listed nowhere in discovery nor has  
17 it ever been disclosed, and if counsel contends that I am  
18 wrong on that, I would like him to point out which discovery  
19 request specifically it is mentioned in.

20 THE COURT: All right.

21 MR. MURPHY: You can go read our responses to your  
22 discovery requests. They're in there. You just didn't --

23 MR. HANSEN: I've read them thoroughly.

24 MR. MURPHY: You just didn't read them.

25 THE COURT: All right. Stop. I'm not having this



1 -- I'm not. I don't have time for this. We're going to  
2 continue to the disputes. Both -- stop.

3 Dispute No. 5: The defense claims that plaintiff's  
4 Rule 26(f) disclosures are deficient. Is this the same  
5 witnesses -- is this the same as number -- as the prior --

6 MR. MURPHY: Well, there's --

7 THE COURT: No. 4?

8 MR. MURPHY: There's three issues on this. Number  
9 one, they're the -- the witnesses where we don't have the  
10 information are the same in No. 9 for --

11 THE COURT: All right. Well, then obviously that's  
12 the same --

13 MR. MURPHY: Okay.

14 THE COURT: -- the same response there. What --

15 MR. MURPHY: But there are also deficiencies  
16 because they're required in this disclosure statement to  
17 state all of the bases of their claims against our client and  
18 provide a listing by category of documents they have to  
19 support those contentions. In addition, they're supposed to  
20 provide us with a breakdown of their damages by dollar  
21 amounts, and they have to provide us with a listing of the  
22 documents that support their claim for damages, and we have  
23 not received any information on this disclosure statement  
24 from them, and we're -- this case has been pending for ten  
25 months, and they didn't put it in their initial disclosure

1 statement that was submitted to the court, and they haven't  
2 provided any kind of information since then, and they should  
3 be ordered to supplement and provide this essential  
4 information that's required by the code.

5 THE COURT: All right. I see that the plaintiff  
6 states that the defendant is seeking this information  
7 prematurely. It's the middle of September. The case is set  
8 for trial in December. So it's not premature.

9 MR. HANSEN: Well, Your Honor, we're still waiting  
10 on amended responses to our first set of discovery. Their  
11 second, third, and fourth responses are due next week.  
12 They've been pushed out, and I've granted extensions on the  
13 second and third. We have been unable to conduct the  
14 deposition of defendant, in which we are going to obtain  
15 significant amount of this information.

16 Our initial disclosures specifically say that -- we  
17 listed (reading): The calculation of damages will based upon  
18 information that includes but is not limited to the number of  
19 times the defendant published the defamatory statements --  
20 we've already discussed that. He hasn't provided it -- the  
21 various channels through which defendant's defamatory  
22 publications have occurred -- have not received any of that;  
23 the total number of persons who were exposed to the  
24 defamatory statements and other factors. We also list that  
25 because defendant's defamatory statements constitute

1 defamation per se, we're seeking general damages as presumed  
2 as a matter of law. We're also seeking actual damages  
3 according to proof --

4 THE COURT: Yes, I know. I can read that. So is  
5 your -- are what you saying here is that you're waiting for  
6 the defense to provide the information that you're going to  
7 use to prove your damages claim? Setting that aside, other  
8 than the information that you are waiting on to receive from  
9 the defense, you must have other information that you're  
10 going to use to --

11 MR. HANSEN: Yes.

12 THE COURT: -- prove your damages. It's responsive  
13 and needs to be produced. When is the earliest you can  
14 produce it?

15 MR. HANSEN: Your Honor, we have produced over  
16 440 pages of documents --

17 THE COURT: No.

18 MR. HANSEN: -- which include citations to Bates  
19 numbers. They asked for -- and specifically in those  
20 document requests, they asked for documents proving damages.  
21 We responded to all of them. We cited the Bates numbers. We  
22 have produced documentation that include, in part,  
23 Mr. Biden's book sales, his art sales that are going to be  
24 used as part of the computation of damages. We have agreed  
25 to submit our client to an independent medical examination at

1 defendant's request, which is scheduled for October 11th.  
2 That will then delve into the emotional damages that  
3 Mr. Biden is alleging. There hasn't been any expert  
4 discovery that has occurred yet. We -- I'll also mention  
5 that plaintiffs have not --

6 MR. MURPHY: Your Honor, what he's saying is --

7 THE COURT: Stop.

8 MR. HANSEN: -- that plaintiffs have not designated  
9 an expert on emotional distress damages. So we will be  
10 appointing a rebuttal expert, possibly, after the conclusion  
11 of the independent medical examination.

12 However, Your Honor, if Your Honor wants us to  
13 supplement these -- our initial disclosures with the  
14 additional information that we have, which I would argue that  
15 we've already done. I'll also argue that -- I'll also point  
16 that defendant's pending special interrogatories, which are  
17 due on Monday, specifically ask for all of this information.  
18 We plan on responding with verified responses -- substantive  
19 verified responses on Monday, on the date that they are due.

20 THE COURT: All right. So you're going --

21 MR. MURPHY: We'll --

22 THE COURT: No.

23 The plaintiff is going to respond by Monday,  
24 September 23rd, with the information in -- currently in the  
25 plaintiff's possession, custody, or control that's responsive

1 to -- let's see. Well, this is a Rule 26 disclosure. The --

2 MR. MURPHY: It says claims --

3 THE COURT: -- Interrogatory No. 9 that is

4 responsive --

5 MR. MURPHY: -- claims -- it would be the claims --

6 THE COURT: No. No.

7 MR. MURPHY: I'm sorry.

8 THE COURT: I'm sorry. I'm speaking.

9 MR. MURPHY: Okay.

10 THE COURT: So the -- by September 23, 2024, all of  
11 the information in the plaintiff's possession, custody, or  
12 control "currently" that is responsive to -- this pertains to  
13 Interrogatory No. 9; is that correct?

14 MR. MURPHY: Yes.

15 THE COURT: All right. This -- obviously there is  
16 -- discovery is ongoing and so if the --

17 MR. HANSEN: Your Honor, Interrogatory No. 9 --

18 THE COURT: -- obtains information in the future --

19 MR. HANSEN: -- pertains to individuals.

20 THE COURT: -- information in the future --

21 MR. MURPHY: I'd love to be able to be heard.

22 This is Rule 26(f). He has to tell us what his  
23 claims are. He has to tell us what his damages are. We  
24 aren't going to know that.

25 MR. HANSEN: We have done so.

1 MR. MURPHY: Your Honor, you can't evade responding  
2 to 26(f) by saying, "Well, I gave you some stuff in  
3 interrogatory answers." The reason the 26(f) disclosure is  
4 important is because that's what you're saying that you may  
5 rely on at trial. That's the difference between answering an  
6 interrogatory and providing a Rule 26(f) disclosure.

7 THE COURT: All right. As to Interrogatory No. 9,  
8 the response, as I said -- the supplemental response has to  
9 be provided by September 23, 2024 --

10 MR. HANSEN: Your Honor, really quickly, we're  
11 confusing issues --

12 THE COURT: -- discovery obligation is ongoing.

13 MR. HANSEN: Interrogatory No. 9 was Issue No. 4  
14 pertaining to the identities of the contributors to the  
15 article. It has nothing to do with --

16 THE COURT: I'm looking at Dispute No. 5.

17 MR. HANSEN: Well, with respect to the Rule 26  
18 disclosures -- yeah, defendant's Interrogatory No. 9 is  
19 asking for the identities of the --

20 THE COURT: Of the same -- all right. So --

21 MR. MURPHY: 9 only deals --

22 MR. HANSEN: (Inaudible.)

23 MR. MURPHY: Your Honor, 9 only deals with the  
24 witnesses. We need the 26(f) disclosures on all claims, all  
25 documents that support those claims, all damage --

1 THE COURT: Oh, I see. Dispute No. 5 is the 26(f)  
2 disclosures. All right.

3 MR. MURPHY: Yeah.

4 THE COURT: When is the earliest that that full  
5 26(f) disclosure can be done, Mr. Hansen?

6 MR. HANSEN: Well, we're going to be responding to  
7 their special interrogatories on Monday, the 23rd, as we  
8 said. I will -- can we have until Tuesday, the 24th, to  
9 provide an additional amended response, to the extent there's  
10 anything to disclose, with everything that is in our client's  
11 possession, custody, or control at this time?

12 THE COURT: Yes. Yes.

13 MR. MURPHY: We're not going to stipulate that  
14 except for what's provided in discovery he doesn't have to  
15 give us anything. We want a full response so we know what  
16 he's going to be using at trial. So, if he's already given  
17 it to us in an "interrog," it's worthless for knowing what we  
18 need to know to prepare the case for trial. So he needs to  
19 give us a full response for all of the things that he's  
20 required to do in 26(f), and that's information on his claims  
21 with documents, information on his damages broken down by  
22 category, calculations, and any evidence -- any documents he  
23 has. And his damages are damage to his reputation, emotional  
24 distress -- or whatever -- he's got to provide that  
25 information that he plans -- he believes he may be using at

1 trial.

2 THE COURT: All right. The supplemental Rule 26  
3 disclosure by the plaintiff has to be provided by  
4 September 24, 2024. All right.

5 MR. HANSEN: To the extent it's within our  
6 knowledge -- possession, custody, or control; correct,  
7 Your Honor, because defendant's deposition --

8 THE COURT: Yes. Obviously, if -- you can't  
9 produce it if it's not in your possession, custody, or  
10 control. If you get information subsequently, then you have  
11 a duty to provide it when you receive it.

12 MR. HANSEN: Yeah. And my concern is just that  
13 with respect to the prior issue, there have been demands --  
14 we've gone to an IDC now -- about stuff that we've said in a  
15 verified response we do not have within our possession,  
16 custody, and control. So I'm just --

17 MR. MURPHY: Sure.

18 MR. HANSEN: -- seeing an issue where we will  
19 produce what we have in our possession, custody, and control  
20 on Tuesday and the defense is going to take issue it with it  
21 regardless of whether or not we don't have it.

22 THE COURT: All right.

23 MR. HANSEN: We can't conjure up information we  
24 don't have.

25 THE COURT: Let's move on to Dispute No. 6:



1 Defendant's RFP 4 seeks all documents, evidencing any threats  
2 plaintiff has received in connection with the defamatory  
3 statements at issue in this case. The --

4 MR. MURPHY: It's the Secret Service documents.

5 THE COURT: All right. If the documents are not in  
6 the plaintiff's possession, custody, or control, then  
7 obviously the plaintiff cannot produce them. If they are in  
8 the possession of a third party, then Federal Rule of Civil  
9 Procedure 45 sets forth the requirements for issuing a third-  
10 party subpoena.

11 MR. MURPHY: I'd like to address the possession,  
12 custody, and control. The Secret Service agents that he  
13 deals with guard him on a regular basis. They're the ones  
14 that provide him with this information. So it would be in  
15 his possession, custody, and control. He would say to them,  
16 "Hey, do you have any documents of any threats?" and they  
17 could give it to him. We don't know who his Secret Service  
18 agents are and who's protecting him, but it would be in his  
19 possession, custody, and control because they would report  
20 those to him and they would provide him with that  
21 information.

22 THE COURT: Well, I have no idea whether the  
23 Secret Service takes documents that are in its possession,  
24 custody, or control and turns them over to its protectees and  
25 so --

1 MR. HANSEN: I do, Your Honor.

2 THE COURT: If you would like to litigate that  
3 issue, it seems to be awfully time consuming, and it would be  
4 far more efficient to simply issue a subpoena to the  
5 government agency that has possession, custody, or control,  
6 rather than litigate presumptions about what the  
7 Secret Service does and doesn't share. But if the plaintiff  
8 doesn't have this, he can't produce it, and I can't order him  
9 to produce something that he doesn't have, and I'm certainly  
10 not going to make a finding that the Secret Service documents  
11 are in the plaintiff's possession, custody, or control.

12 All right --

13 MR. HANSEN: Your Honor, I've spoken with my client  
14 directly about this issue, and I've confirmed that the  
15 Secret Service doesn't operate that way.

16 THE COURT: Right. I --

17 MR. HANSEN: They don't work on behalf of their  
18 charges --

19 THE COURT: Right.

20 MR. HANSEN: -- the people that they guard. They  
21 simply do not. If -- the only means of obtaining those  
22 documents are, potentially, through a subpoena. I don't even  
23 know if they'll respond to that. But I just want to make  
24 that clear, that I have asked my client that, I've asked him  
25 to look into it, and he has confirmed to me that that's

1 simply not how the Secret Service works. And I've informed  
2 the defense of that, and our discovery responses state that,  
3 after a reasonable and diligent search, plaintiff has not  
4 located any of these documents and that he's informed and  
5 believed to the extent they exist, the United States  
6 Secret Service would have them in their possession.

7 THE COURT: All right. Well, that's a sufficient  
8 response. I'm certainly not going to order any supplemental  
9 response to that.

10 All right. Dispute No. 7: Defendant's responses to  
11 plaintiff's RFPs 37 to 44 seek all documents supporting  
12 defendant's affirmative defenses.

13 MR. MURPHY: Okay.

14 THE COURT: Has defense provided a supplemental --  
15 has the defense fully responded, in the defendant's view, to  
16 this -- these RFPs?

17 MR. MURPHY: Yeah. The 34 through -- 37 through 44  
18 we've only responded with a code-compliant response, and we  
19 said the defendant shall produce any and all documents in its  
20 possession, custody, and control. That's what the code  
21 requires.

22 Now, on some of the other requests to produce, they  
23 asked us to produce documents, and we said, "We'll produce  
24 these documents," and we identified them, and we did not make  
25 it clear that we were producing all documents that we have in

1 our possession, custody, and control. So on those other  
2 request for admissions -- or requests to produce that were a  
3 part of this No. 7, we went ahead and served and cleaned up  
4 all of those responses. We also confirmed that we weren't  
5 withholding anything privileged and there was no need for a  
6 privilege log, but on these, we just didn't give an  
7 appropriate response that was code compliant, and to say  
8 "Defendant shall produce all requested documents in its  
9 possession, custody, or control" is a code-compliant  
10 response. We shouldn't have to provide an additional  
11 response.

12 THE COURT: So what is that the --

13 MR. HANSEN: Your Honor --

14 THE COURT: Are all the -- have all the documents  
15 been produced?

16 MR. MURPHY: So far, yes. Everything that we have  
17 that they've asked for we've produced.

18 THE COURT: All right. So the issue --

19 MR. HANSEN: -- declaration (inaudible).

20 THE COURT: Pardon me, Mr. Hansen? So what is the  
21 issue here?

22 MR. HANSEN: They -- the issue is with respect to  
23 other -- their current response is concerning because with  
24 respect to other responses, they specifically identified  
25 documents that they were going to produce, and then they also

1 those are all the documents in his possession, custody, and  
2 control; no other documents exist. This response leaves the  
3 door open, that they "shall produce" all requested documents  
4 in his possession, custody, and control.

5 To date, we've received a two-page declaration and  
6 three completely unauthenticated recordings. That is it.  
7 These exact same discovery requests -- these request for  
8 production have been pending since March. I'll reiterate  
9 that. So, if he's going to -- "shall produce" infers, to me,  
10 that that will happen at some identified time in the future.  
11 The deadline for them to produce has long past. I'm simply  
12 asking for the same unequivocal statement that he provided in  
13 response to these -- the other requests stating that no other  
14 documents exist. That's all I'm requesting.

15 THE COURT: All right. So in -- regarding RFPs 37  
16 through 44, Mr. Murphy, has the defense produced all of the  
17 documents in --

18 MR. MURPHY: Yes.

19 THE COURT: -- possession, custody, or control?

20 MR. MURPHY: The defense has produced all of the  
21 documents, and our only obligation in responding to these  
22 with a code-compliant response is the one that we've given.

23 On the other ones, he was right. We had to provide  
24 additional information because they asked for a category of  
25 documents, and we said, "Oh, okay. We're producing these

1 documents," and we listed them. And we did not confirm that  
2 we were producing everything that we have. It was not a  
3 code-compliant response. So on those, yeah, he was entitled  
4 to a further response, and we gave those to him, and they're  
5 -- he's not complaining about them. He's just saying we  
6 should have to give more than what we're required to under  
7 the code, and that's the code-compliant response. He's  
8 admitting we provided a code-compliant response.

9 MR. HANSEN: I'm merely asking why --

10 THE COURT: All right. I'm at a loss. What is  
11 that you -- I'm at a loss for what this dispute is. The --

12 MR. HANSEN: Your Honor --

13 THE COURT: You want the -- just what is it that  
14 the defendant hasn't given you that you think you're entitled  
15 to?

16 MR. HANSEN: With respect to -- he is correct. He  
17 amended his other responses to the requests for production,  
18 and I was satisfied with them.

19 With respect to these which all -- asks for all  
20 documents supporting his various affirmative defenses, these  
21 are very important requests. His request to me -- and if the  
22 Court isn't inclined to order it, that's fine. I do agree  
23 it's a code-compliant response. I'm just -- it's curious  
24 that in response to these ones, there's the wording defendant  
25 "shall produce" all requested documents, inferring that it'll

1 happen at some unidentified point in the future. Whereas in  
2 response to --

3 THE COURT: All right. So, Mr. Murphy, when you  
4 said you "shall produce," are you stating that you're going  
5 to be producing documents in the future in response to these  
6 RFPs?

7 MR. MURPHY: If we run into any -- the way this  
8 works is, if we run into anything else where we find  
9 additional evidence and it fits within their requests to  
10 produce or interrogatories, we have a duty to supplement  
11 them, and we will, and the same thing --

12 THE COURT: No, no, no. Not if you "run into  
13 anything." If it's currently in your client's possession,  
14 custody, or control --

15 MR. MURPHY: We've given everything --

16 THE COURT: -- has to be produced now.

17 MR. MURPHY: We've given everything that's in our  
18 client's possession.

19 THE COURT: All right.

20 MR. MURPHY: And then there's one other thing I  
21 wanted to mention to alleviate counsel's concerns. We  
22 notified counsel that we're going to be providing him with a  
23 further code-compliant 26(f) disclosure, just as we've  
24 requested of them. And so what -- it will reveal to him the  
25 witnesses and documents we have -- either we received them

1 from his client or documents that we produced that we may be  
2 intending to use at trial. So we're going to list all of  
3 that stuff so he'll see where we stand. It'll give him an  
4 update on any concerns that he has. All he had to do was  
5 write me an email and say, "Hey, have you given me  
6 everything?" and I would have answered it, but to say, well,  
7 I've got to amend all of these responses isn't appropriate.

8 THE COURT: All right. So that's --

9 MR. HANSEN: I've sent multiple letters --

10 THE COURT: No.

11 MR. HANSEN: -- and emails.

12 THE COURT: All right. I've -- that takes care of  
13 all of the disputes that are set forth in the email. You all  
14 are coming rapidly upon your trial date. So I would strongly  
15 encourage you to cooperate and get your discovery completed.

16 MR. HANSEN: Your Honor, can I just note --

17 THE COURT: All right.

18 MR. HANSEN: -- one other thing?

19 Defendant's responses to the second, third, and  
20 fourth sets of discovery requests -- as you noted, trial is  
21 rapidly approaching. They're all due either next week or the  
22 week after. We have been met with continuous, repeated  
23 delays throughout this entire litigation. Counsel can refute  
24 that. The record speaks for itself. I have all the emails  
25 showing it. And I would just suggest that, because of the



1 impending trial date, can the Court, please, order the  
2 defendants to produce responses on a timely basis, on the  
3 date that they are due, to each and every one of those  
4 responses -- those various sets of requests?

5 MR. MURPHY: Your Honor, that's not an appropriate  
6 request. I can't trust counsel to give me an extension. He  
7 told me I had an extension until September 5, and then he  
8 said the 21st, and he confirmed it in writing, and then later  
9 he said, "Oh, no. I made a mistake. You don't have the  
10 extension to the 21st, and by the way, all your objections  
11 are waived on the request for admissions are now deemed  
12 admitted," when they weren't --

13 MR. HANSEN: I made a good faith --

14 MR. MURPHY: Let me --

15 MR. HANSEN: I made a good faith position --

16 THE COURT: All right.

17 MR. HANSEN: -- based on what I understood the --

18 MR. MURPHY: -- and they weren't done --

19 MR. HANSEN: -- to be.

20 MR. MURPHY: You're interrupting me, and I didn't  
21 finish.

22 MR. HANSEN: And I admitted my mistake --

23 MR. MURPHY: And what happened was --

24 MR. HANSEN: -- immediately --

25 THE COURT: Okay.

1 MR. MURPHY: -- on September 5 --

2 THE COURT: Stop. Both of you.

3 MR. MURPHY: -- email and had to object to all that  
4 discovery because there was no way I could answer it in one  
5 day, and I relied on his extension.

6 THE COURT: All right.

7 MR. MURPHY: So for him to complain that there's  
8 delays when his gamesmanship on his extensions, and I have  
9 emails on it -- and I even responded to his emails and was  
10 polite when I was on vacation. I was in a boat --

11 THE COURT: All right.

12 MR. MURPHY: -- in the middle of Lake Tahoe, and I  
13 was responding to his emails. So for him to say --

14 MR. HANSEN: He responded and demanded that I be --

15 MR. MURPHY: -- we're not diligent --

16 MR. HANSEN: -- removed from this case --

17 MR. MURPHY: -- and we're not working on this --

18 MR. HANSEN: -- and then he refused --

19 THE COURT: Stop.

20 MR. MURPHY: -- and we're hiding information --

21 MR. HANSEN: -- to communicate with me and he --

22 MR. MURPHY: -- is utter nonsense.

23 MR. HANSEN: -- about any discovery disputes.

24 THE COURT: All right. I think you both need to  
25 stop.

1 MR. HANSEN: That was his response.

2 THE COURT: I think you both need to stop. This  
3 squabbling is completely unhelpful. It's not good advocacy  
4 on behalf of either of your clients, and it does absolutely  
5 nothing for either one of your clients. I refer you both to  
6 the "Civility and Professionalism Guidelines," which are on  
7 the website of the Central District of California. It  
8 specifically itemizes discovery and encourages counsel to be  
9 civil and professional. I very strongly encourage both of  
10 you to do that. I am not issuing any orders other than what  
11 are in response to the informal discovery conference today.

12 MR. MURPHY: Thank you, Your Honor.

13 THE COURT: You have trial rapidly approaching.  
14 You would both be well served to just conduct your discovery  
15 and stop the irrelevant, unhelpful squabbling.

16 MR. MURPHY: Thank you, Your Honor.

17 THE COURT: All right.

18 MR. HANSEN: Thank you, Your Honor.

19 THE COURT: All right. I think that ends all --  
20 that is -- are all of the disputes that are in the email. My  
21 rulings are as set forth on the record.

22 MR. MURPHY: Thank you, Your Honor.

23 THE COURT: You're welcome

24 MR. HANSEN: Thank you for your time, Your Honor.

25 (Proceedings adjourned at 4:45 p.m.)

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CERTIFICATE

I certify that the foregoing is a correct transcript  
from the electronic sound recording of the proceedings in the  
above-entitled matter.

/s/ Julie Messa  
Julie Messa, CET\*\*D-403  
Transcriber

September 23, 2024  
Date